

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

:::

ORDER

**Rakesh Kumar
Vs.
The State of Rajasthan & Ors.**

**S.B. CIVIL WRIT PETITION
NO.3868/2001 UNDER
ARTICLE 226 OF THE
CONSTITUTION OF INDIA.**

DATE OF ORDER

:: 22nd December, 2006

PRESENT

REPORTABLE

HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr. Anil Bhandari, Advocate, for the petitioner.

Mr. Rameshwar Dave, Dy. Government Advocate, for the respondents.

<><><>

BY THE COURT:

The petitioner was appointed by the respondents on the post of Teacher Grade-III in Zila Parishad Udaipur and allotted

the Panchayat Samiti, Kotada, District Udaipur. He was required by letter dated 23.5.1999 to report for duty on or before 1.6.1999. When however he was not allowed to join he went to the office of Vikas Adhikari, Panchayat Samiti, Kotada but he was given an order dated 15.6.1999 saying that though the Chief Executive Officer of Zila Parishad issued order for appointment of the petitioner but subsequently, instructions have been issued by him that the appointments have been stayed and as such the petitioner was not allowed to join his duty. However, the matter was again examined BY the respondents and ultimately, the petitioner was allotted Panchayat Samiti, Kherwara instead of Kotada and the petitioner was asked to join his services by 30.10.1999. In pursuance to the said order, the petitioner went to the office of Vikas Adhikari, Panchayat Samiti, Kherwara but he was not allowed to join his duties. The Vikas Adhikari, Panchayat Samiti sought guidance from the Addl. Chief Executive, Zila Parishad because the petitioner passed the Basis School Teacher's Course from Bihar Pradesh Shiksha Parishad, Sripalpur, Patna, which was not recognized by the National Council for Teachers

Education.

According to learned counsel for the petitioner in view of the fact that the petitioner has been appointed twice and he has been illegally prevented from joining, the writ petition may be allowed and the respondents be directed to permit the petitioner to join his duty pursuant to appointment order dated 14.10.1999.

The respondents in their reply to the writ petition have contended that since the certificate of BSTC obtained by the petitioner from Bihar Pradesh Shiksha Parishad, Sripalpur, Patna is not recognized by National Teacher's Council, therefore, the petitioner was not entitled to appointment. It has been contended that revised merit list has been issued pursuant to the judgment of the Hon'ble Supreme Court in Kailash Chand Sharma Vs. State of Rajasthan & Ors (2002) 6 SCC 562 whereby it was directed that all those appointments which were made upto 17.11.1999 need not to be reopened. Pursuant to the said judgment of the Hon'ble Supreme Court,

15 marks provided to the petitioner were deducted and petitioner's merit would hardly come to 60.10% whereas last candidate appointed in his category secured 73.58%.

The petitioner however contends that the Hon'ble Supreme Court in Kailash Chandra Sharma (supra) with a view to doing complete justice to the parties has saved/protected all those appointments, which were made upto 17.11.1999 and therefore merit position obtaining after deduction of the bonus marks cannot form basis for denial of appointment to the petitioner. He argued that since initial appointment order of the petitioner was issued on 23.5.1999 but then he was not allowed to join and thereafter again another order was issued in his favour on 14.10.1999 but this time also his joining was declined. Both these dates fall before 18.11.1999 which has been given as the cut off date in the aforesaid judgment of the Hon'ble Supreme Court therefore the petitioner cannot be denied appointment.

Learned counsel for the petitioner relied upon the

Division Bench judgment of this Court in State of Rajasthan & Ors. Vs. Jabra Ram 2005(1) WLC (Raj.) 637 in which it was held that though the National Council of Teacher's Education Act, 1993 came into force on 1st Sept., 1993 but the process for recognition of the universities and degrees could be commenced only after 17.8.1997 when the regulations were framed and published in the gazette on 24.2.1999, the requirement of recognition from NCTE under the Act of 1993 for those courses/degrees admissions to which were made prior to 17.8.1997 therefore could not be insisted.

Learned counsel for the petitioner also relied on the judgment of Division Bench of this Court in State of Rajasthan VS. Bharat Kumar Sharma (D.B. Civil Special Appeal (W) No.424/2002) decided on 19.1.2005. A perusal of the aforesaid Division Bench judgment reveals that this was based on still two earlier Division Bench judgments of this Court in Ram Narayan Vs. State, D.B. Civil Writ Petition No.2884/1999 decided on 2.4.2003 and Ummed Ali Vs. State of Rajasthan & Ors, D.B. Civil Writ Petition No.2887/1999 decided on

18.3.2004. It was held therein that "the scheme unfolded in Sections 14 and 17 of the Act of 1993 clearly reveals that until the matter of recognition is under consideration and the order of refusal is communicated to the concerned institute, it is authorized to offer a course or training in the teacher education as a recognized institution and it does not get obliterated subsequently on non-recognition of the institution".

The aforesaid Division Bench judgment noted the fact that the institutions in question, namely Shri Brihad Gujrat Sanskrit Parishad, Ahmedabad moved on 12th Nov., 1996 for recognition and such recognition was refused to them for giving admission from the academic Session 1998-99 by order dated 28th May, 1998 and therefore it was held till recognition was refused admissions could be lawfully given and such degrees would be valid for appointment.

In view of the settled position of law, the present writ petition deserves to be allowed and is hereby allowed. The respondents are therefore directed to consider his case for

appointment on the post of Teacher Grade-III and if found suitable, appoint him on the basis of his placement in the merit list prepared pursuant to selection in question within a period of two months from the date of service of copy of this judgment.

There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.

c.p.goyal/-